

**UNITED STATES COURT FOR THE
WESTERN DISTRICT OF TEXAS – SAN ANTONIO DIVISION**

**ANA-ALICIA ARGUELLES,
INDIVIDUALLY AND AS NEXT
FRIEND OF MINOR CHILD V.A.**

v.

**MP LOGISTICS GROUP CORP AND
RAFAEL CESPEDES OQUENDO**

§
§
§
§
§
§
§

CASE NO: 1:21-cv-146

**JURY DEMANDED
REMOVED FROM THE 207TH
JUDICIAL DISTRICT OF
COMAL COUNTY, TEXAS**

**DEFENDANTS MP LOGISTICS GROUP CORP
AND RAFAEL CESPEDES OQUENDO’S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants MP Logistics Group Corp (“MP Logistics”) and Rafael Cespedes Oquendo (“Oquendo”) (jointly referred to as “Defendants”) file this their Notice of Removal, filed pursuant to 28 USC §§1332, 1441, and 1446, to remove an action filed against them in the 207th Judicial District Court of Comal County, Texas to the United States District Court for the Western District of Texas, San Antonio Division. In support of this removal, Defendants respectfully show this Court the following:

**I.
BRIEF FACTUAL AND PROCEDURAL BACKGROUND**

This is a personal injury case arising out of an automobile accident which occurred in Comal County, Texas on July 6, 2020. *See Exhibit A* (Plaintiff’s Original Petition), ¶ 8. Plaintiff’s Original Petition asserts various causes of action against MP Logistics and Oquendo and further alleges that MP Logistics is vicariously liable for the negligence of Oquendo. Plaintiff’s Original Petition also includes direct claims against MP Logistics as the employer of Oquendo and the owner of the vehicle that was entrusted to Oquendo at the time of the accident.

II.

TIMELINESS OF REMOVAL

Plaintiff served the Texas Secretary of State with the citation for Defendant MP Logistics on August 4, 2020. Plaintiff served Defendant Oquendo via substituted service by certified mail on January 14, 2021. Pursuant to 28 USC §1446(b)(1), Defendant Oquendo timely files this Notice of Removal within thirty (30) days after service and receipt of Plaintiff's Original Petition. Defendant MP Logistics consents to the filing of this Notice by Defendant Oquendo.

III.

GROUND FOR REMOVAL

Removal is proper because diversity subject matter jurisdiction exists under 28 USC §1332(a)(1) because complete diversity of citizenship between Plaintiff and Defendants existed at the time that the underlying action was filed in State Court (July 30, 2020) and the time of this removal (February 10, 2021).

A. Amount in Controversy

In her Original Petition, Plaintiff alleges that she seeks "monetary relief over \$200,000.00 but not more than \$1,000,000.00" *Exhibit A*, ¶ 3. The amount in controversy therefore exceeds the sum or value of \$75,000, exclusive of interest and costs, as required under 28 USC §1332(a).

B. Complete Diversity of Citizenship Exists Between Plaintiff and Defendants-- Citizenship of the Parties

1. A corporation is deemed to be a citizen of the State in which it is incorporated and the State where it has its principal place of business. 28 USC §1332(c)(1). MP Logistics is incorporated and its principal place of business are both in the State of Florida. Thus, MP Logistics is a citizen of Florida.
2. Oquendo is a resident of the State of Florida. Therefore, Oquendo is a citizen of

Florida.

3. Plaintiff is a citizen of the State of Texas. *Exhibit A*, ¶ 4.

Because Plaintiff is a citizen of the State of Texas and Defendants are both citizens of the State of Florida, complete diversity of citizenship exists, and this court has jurisdiction under 28 USC §1332(a)(1) and removal is proper under 28 USC §1441(a).

IV. **VENUE**

Venue is proper in this Court under 28 USC §1441(a) because this District and Division embrace the place in which the removed State Court action has been pending. Specifically, the 207th Judicial District Court of Comal County, Texas is geographically located within the San Antonio Division of the United States District Court for the Western District of Texas.

V. **COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

Pursuant to 28 USC §1446(a), copies of all process, pleadings, and orders in the State Court are attached to this Notice including the following:

- Exhibit A:* Plaintiff's Original Petition filed July 28, 2020 (without file-stamp);
- Exhibit B:* Civil Citation issued to MP Logistics Group Corp served via the Texas Secretary of State on August 4, 2020;
- Exhibit C:* Civil Citation issued to Rafael Cespedes Oquendo served upon him on January 14, 2021;
- Exhibit D:* Original Answer of MP Logistics Group Corp filed on January 26, 2021;
- Exhibit E:* Original Answer of Rafael Cespedes Oquendo filed on February 1, 2021;
- Exhibit F:* A copy of the State Court Docket Sheet.

Defendants will properly file a Notice of Filing of Notice Removal with the Clerk of the State Court where the suit is pending. A copy of that Notice is attached as *Exhibit G*.

Defendants will file a Disclosure Statement pursuant to FED. R. CIV. P. 7.1.

In the event this Court subsequently identifies a defect in this Notice of Removal, Defendants respectfully request this Court to grant them leave to amend this Notice to cure the defect. In filing this Notice of Removal, Defendants do not waive any legal defenses or objections to Plaintiff's Original Petition and reserve their right to raise any and all legal defenses or objections in subsequent pleadings in this Court.

This Notice of Removal is signed pursuant to Rule 11, FED. R. CIV. P. as required under 28 USC §1446(a).

VI.
JURY DEMAND

Defendants make a jury demand in accordance with State law in the State Court proceeding and have, therefore, preserved their right to a jury trial. *See* Rule 81(c)(3)(A), FED. R. CIV. P. With this Notice, Defendants also are filing a jury demand in this Court.

VII.
CONCLUSION

In conclusion, Defendants represent that they have complied with the removal statutes set forth above and that this case thus stands removed from the 207th Judicial District Court of Comal County, Texas to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted and signed
Pursuant to FED. R. CIV. P., Rule 11

DAVIS & WRIGHT, P.C.

Attorneys at Law
5316 W. Highway 290, Ste. 150
Austin, Texas 78735
(512) 482-0614 telephone
(512) 482-0342 facsimile



By: _____

David A. Wright
State Bar No. 22026300
dwright@dwlaw.com
Katy Merrill Andre
State Bar No. 24040438
kandre@dwlaw.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via electronic filing on the following attorneys of record on this 11th day of February 2021:

John Arthur Daspit
Tyler N. Wilson
Daspit Law Firm
440 Louisiana St., Ste. 1400
Houston, TX 77002



David A. Wright